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PATENT

Anten Docket No.: P-12509  
Finnegan Docket No.: 6148.0018-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE *JDS*

In re Application of:

Gary K. MICHELSON, M.D.

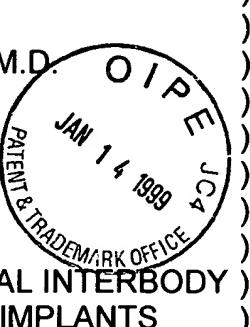
Serial No.: 08/484,928

Filed: June 7, 1995

For: FRUSTO-CONICAL INTERBODY  
SPINAL FUSION IMPLANTS

Assistant Commissioner for Patents  
Washington, DC 20231

Sir:



Group Art Unit: 3301

Examiner: M. Brown

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JAN 25 1999

**Group 3700**

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), applicant brings to the attention of the Examiner the documents listed on the attached PTO 1449. Copies of the listed documents were submitted in prior application serial no. 08/396,414, filing dated February 27, 1995, upon which applicant relies for benefits provided in 35 U.S.C. §120 except for U.S. Patents 5,443,514; 5,458,638; 5,683,463; 5,766,252 and D397,439, which are being submitted concurrently herewith. This Supplemental Information Disclosure Statement is being filed as a supplement to the Information Disclosure Statements filed July 9, 1997, and December 19, 1997. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$240.00 as specified by Section 1.17(p).

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Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form. Applicant also notes that a signed form 1449 submitted with the Information Disclosure Statements dated July 9, 1997, and December 19, 1997 has yet to be received by Applicant. Applicant requests the Examiner to provide copies of each of the signed Form 1449's to the Applicant.

The present application Serial No. 08/484,928 is a continuation-in-part application of Serial No. 08/396,414, which is a continuation-in-part of Serial No. 08/074,781, now U.S. Patent No. 5,484,437, which is a continuation-in-part application of Serial No. 07/968,240, now U.S. Patent No. 5,741,253, which is a continuation application of Serial No. 07/698,674, now abandoned, which is a divisional application of Serial No. 07/205,935, now U.S. Patent No. 5,015,247. The present application Serial No. 08/484,928 is also a continuation-in-part of Serial No. 08/390,131, now U.S. Patent 5,593,408.

Applicant brings to the Examiner's attention that the '247 patent is the subject of litigation in the United States District Court for the Central District of California, Western Division, Civil Action No. 95-0258RG, hereinafter referred to as Litigation 1. The claims of the '247 patent are directed to a fusion implant.

The '253 patent is the subject of litigation in the United States District Court for the Western District of Tennessee, Civil Action No. 98-2369GA (JSG), hereinafter referred to as Litigation 2. The claims of the '253 patent are generally directed to a method for preparing adjacent vertebrae to receive an implant.

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In Litigations 1 and 2, the Defendants have asserted that various references are pertinent to the issue of validity of the '247 and '253 patents respectively under 35 U.S.C. §§102 and 103. Applicant notes for the Examiner on the attached Form 1449 in the column for the Examiner's initials the references identified by Defendants in Litigations 1 and/or 2 by the designation "Lit. 1" and "Lit. 2".

In addition to the designated references on the attached Form 1449, the Defendants in Litigations 1 and 2 identified the following U.S. Patents and foreign references. These references were submitted to the Examiner with the Information Disclosure Statement filed July 9, 1997, but are listed herein out of an abundance of caution as being identified by Defendants as allegedly pertinent to the issue of validity in Litigations 1 and 2.

Lit. 1: U.S. Patent Nos. 3,298,372 to Feinberg; 3,604,487 to Gilbert; 3,905,047 to Long; 4,016,651 to Kawahara; 4,086,701 to Kawahara; 4,124,026 to Berner; 4,175,555 to Herbert; 4,177,524 to Grell; 4,259,072 to Hirabayashi; 4,262,369 to Roux; 4,293,962 to Fuson; 4,328,593 to Sutter; 4,349,921 to Kuntz; 4,356,572 to Guillemin; 4,484,570 to Sutter; 4,501,269 to Bagby; 4,653,486 to Coker; 4,713,004 to Linkow; 4,743,256 to Brantigan; 4,834,757 to Brantigan; 4,877,020 to Vich; 4,878,915 to Brantigan; 5,084,050 to Draenert; and Re. 31,865 to Roux; and and German Patent Nos. 1961531 and DE 3505567 A1.

Lit. 2: U.S. Patent Nos. 3,128,768 to Geistauts; 3,486,505 to Morrison; 3,848,601 to Ma; 3,875,595 to Froning; 3,892,232 to Neufeld; 4,501,269 to Bagby; 4,545,374 to Jacobson; 4,570,624 to Wu; 4,743,265 to Brantigan; 4,834,757 to Brantigan; 4,848,327 to Perdue; and 4,878,915 to Brantigan.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and applicant determines that the cited documents do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

By:   
Thomas H. Martin  
Reg. No. 34,383

Date: January 14, 1999

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